

management, or structural) that restores functions and values of grassland and shrubland (native and naturalized plant communities).

Restoration agreement means an agreement between the program participant and the United States Department of Agriculture to restore or improve the functions and values of grassland and shrubland.

Restored grassland means land that is reestablished through vegetative, management, or structural practices, to grassland and shrubland, according to criteria in the NRCS Field Office Technical Guide.

Secretary means the Secretary of Agriculture.

Shrubland means land that the dominant plant species is shrubs, which are plants that are persistent, have woody stems, a relatively low growth habitat, and generally produces several basal shoots instead of a single bole.

Significant decline means a decrease of a species population to such an extent that it merits direct intervention to halt further decline, as determined by the NRCS State Conservationist in consultation with the State Technical Committee.

Similar function and value means plants that are alike in growth habitat, environmental requirements, and provide substantially the same ecological benefits.

State technical committee means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. § 3861.

USDA means the Chief, NRCS, and the Administrator, FSA.

§ 1415.4 Program requirements.

(a) Only landowners may submit applications for easements. For rental agreements, the prospective participant must provide evidence of control of the property for the duration of the rental agreement.

(b) The easement and rental agreement will require that the area be maintained in accordance with GRP goals and objectives for the duration of the term of the easement or rental agreement, including the conservation, protection, enhancement, and, if nec-

essary, restoration of the grassland functions and values.

(c) All participants in GRP are required to implement a conservation plan approved by USDA to conserve, protect, enhance, and, if necessary, restore the viability of the grassland enrolled into the program. The conservation plan documents the conservation values, characteristics, current and future use of the land, and practices that need to be applied along with a schedule for application.

(d) The easement and rental agreement must grant USDA or its representatives a right of ingress and egress to the easement and rental agreement area. For easements, this access is legally described by the conservation easement deed. Access to rental agreement areas is identified in the GRP conservation plan.

(e) Easement participants are required to convey title that is acceptable to the United States and provide consent or subordination agreements from each holder of a security or other interest in the land. The landowner must warrant that the easement granted the United States is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by the USDA.

(f) Easement participants are required to use a standard GRP conservation easement deed developed by USDA. The easement grants development rights, title, and interest in the easement area in order to protect grassland and other conservation values.

(g) The program participant must comply with the terms of the easement or rental agreement and comply with all terms and conditions of the conservation plan and any associated restoration agreement.

(h) Easements and rental agreements allow the following activities:

(1) Common grazing practices, including maintenance and cultural practices on the land in a manner that is consistent with maintaining the viability of native and naturalized grass and shrub species;

(2) Haying, mowing, or harvesting for seed production, except that such uses

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shall have certain restrictions as determined by the NRCS State Conservationist, in consultation with the State technical committee, in order to protect, during the nesting season, birds in the local area that are in significant decline or are conserved in accordance with Federal or State law; and

(3) Fire rehabilitation and construction of firebreaks, fences, corrals, watering facilities, seedbed preparation and seeding, and any other related facilitating practices, as determined by USDA, needed to protect and restore the grassland functions and values.

(i) Any activity that would disturb the surface of the land covered by the easement is prohibited except for:

(1) Common grazing management practices which are carried out in a manner consistent with maintaining the functions and values of grassland common to the local area, including fire rehabilitation and construction of firebreaks, construction of fences, and restoration practices,

(2) Maintenance and necessary cultural practices associated with common grazing practices, and

(3) Other activities that result in only a temporary disturbance to the surface of the land where USDA determines that the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland resources protected under an easement or rental agreement. Such a temporary disturbance, being of a short duration and, not to exceed the extent of time ordinarily necessary for completing an activity, as determined by USDA.

(j) Rental agreement contracts may be terminated by USDA without penalty or refund if the original participant dies, becomes incompetent, or is otherwise unavailable during the contract period.

(k) Participants, with the agreement of USDA, may convert rental agreements to an easement, provided that the easement is for a longer duration than the rental agreement, funds are available, and the project meets conditions established by the USDA. Land cannot be enrolled in both a rental agreement option and an easement enrollment option at the same time. The rental agreement shall be deemed ter-

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minated the date the easement is recorded in the local land records office.

§ 1415.5 Land eligibility.

(a) GRP is available on privately owned lands, which include private and Tribal land. Publicly-owned land is not eligible.

(b) Land is eligible for funding consideration if the NRCS State Conservationist determines that the land is:

(1) Grassland, land that contains forbs, or shrubs (including native and naturalized rangeland and pastureland); or

(2) The land is located in an area that has been historically dominated by grassland, forbs, or shrubs, and the State Conservationist, with advice from the State technical committee, determines that it has potential to provide habitat for animal or plant populations of significant ecological value, if the land is—

(i) Retained in the current use of the land; or

(ii) Restored to a native or naturalized grassland conditions.

(c) Incidental lands, in conjunction with eligible land, may also be considered for enrollment to allow for the efficient administration of an easement or rental agreement.

(d) Forty contiguous acres is the minimum acreage eligible for enrollment in GRP. However, less than 40 acres may be accepted if the USDA, with advice from the State technical committee, determines that the enrollment of acreage meets the purposes of the program and grants a waiver. USDA, at the State level, may also establish a higher minimum acreage level. USDA will review any minimum acreage requirement other than the statutory baseline level of 40 acres to ensure, to the extent permitted by law, that this requirement does not unfairly discriminate against small farmers.

(e) Land will not be enrolled if the functions and values of the grassland are already protected under an existing contract or easement. This land becomes eligible for enrollment in GRP when the existing contract expires or is terminated and the grassland values and functions are no longer protected.

(f) Land on which gas, oil, earth, or other mineral rights exploration has